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8 Attorney for Plaintiff Diane Slater

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13
14 DIANE SLATER,

15 Plaintiff,

CASE NO. 23-cv-03703-JD

16 **PLAINTIFF'S RESPONSE TO OSC**

17 vs.

18 FDIC, AS RECEIVER FOR FIRST
19 REPUBLIC BANK

20 Defendant
21

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24 Plaintiff Diane Slater responds as follows to the OSC issued by the Court on September
25 19, 2024 regarding a failure to prosecute.

26
27 Plaintiff Diane Slater worked as a branch manager of First Republic Bank in Danville,
28 California for many years. After her employment ended, she sued First Republic Bank for
29

1 various wage and hour claims in state court, which eventually ended up in binding arbitration.
2 During the arbitration, First Republic Bank went into FDIC receivership. Ms. Slater made a
3 claim with FDIC. Ms. Slater then filed the present action.
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5 As the Court has noted, this case was stayed by the Court until August 12, 2024 as the
6 plaintiff's claim with the FDIC was still pending, there was an issue regarding potential insurance
7 coverage, and the parties were considering mediation. The parties were to file a status report by
8 August 19, 2024.
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10 Plaintiff's counsel and his wife were on the west side of Vancouver Island on August 19,
11 2024 and internet access was very spotty. Linda Wong, FDIC's attorney, sent plaintiff's counsel
12 an email on August 19, 2024 stating that she would prepare a draft status report for plaintiff's
13 counsel's review. Plaintiff's counsel did not receive that email until later due to the spotty
14 internet access. When Ms. Wong sent the email she received an automatic response that
15 plaintiff's counsel was on vacation. She then filed unilaterally a status report with the Court.
16

17 Plaintiff's counsel apologizes to the Court and to Ms. Wong for not participating in the
18 status report. He should have taken care of it before he left for vacation.
19

20 As to the status of the case, on June 24, 2024 Ms. Wong provided plaintiff's counsel with
21 a declarations page for an insurance policy that includes coverage for "employment practices
22 liability." However, the declarations page seems to indicate that there is a \$350,000.00
23 deductible ("third party retention"). Ms. Slater has alleged that her claims exceed this amount.
24 Plaintiff's counsel has contacted the insurance carrier (National Union Fire – part of AIG) about
25 Ms. Slater's claim, but a claims person has not yet reached out to him.
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1 Ms. Wong also provided plaintiff's counsel with a balance sheet summary on May 21,
2 2024 listing the assets and liabilities of First Republic Bank. She indicated that it appeared it
3 was unlikely there would be money left over for Ms. Slater's claim.
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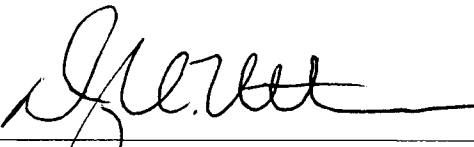
5 On September 9, 2024, plaintiff's counsel sent an email to Ms. Wong stating that the
6 parties should try to agree on an amount for a receivership certificate. It is plaintiff's counsel's
7 understanding based on conversations with Ms. Wong and other counsel for the FDIC that the
8 best Ms. Slater can do is to obtain a receivership certificate and then hope there is money left
9 over from the receivership for her claim. If she litigates the case and prevails the resulting
10 Judgment would just be the equivalent of a receivership certificate.
11 Plaintiff's counsel in his email to Ms. Wong on September 9, 2024 suggested that they try to
12 agree on an amount for a receivership certificate by way of negotiation directly between them, or
13 by way of mediation. Plaintiff's counsel is waiting for a response to that email.
14

15 It would seem to be a waste of everyone's time and money to proceed forward with
16 discovery and trial preparation if eventually there is no money available in the receivership. The
17 receivership, however, is still proceeding and so it is unknown if there will be money available
18 for Ms. Slater's claims. Plaintiff's counsel asked Ms. Wong in his last email if she knew when
19 the receivership might be completed. If First Republic Bank was in bankruptcy there would be
20 an automatic stay of the litigation, but there does not appear to be any such stay for receivership
21 proceedings.
22

23 Plaintiff's counsel suggests that a further stay should be issued by the Court in order for
24 the parties to agree on an amount for a receivership certificate (either by way of direct negotiation
25 or mediation), for plaintiff's counsel to inquire further about possible insurance coverage, and for
26 the receivership to be completed.
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LAW OFFICE OF DOUGLAS A. PRUTTON

Dated: 9/26/2024



Douglas A. Prutton
Attorney for Claimant Diane Slater

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States or employed in the County of Contra Costa, California, over the age of 18 years, and not a party to the within entitled action. I am an employee of the Law Offices of Douglas A. Prutton, and my business address is 1985 Bonifacio Street, Suite 101, Concord, California 94520, telephone number (925) 677-5080, facsimile number (925) 677-5089.

On **September 26, 2024** I served the following described document:


PLAINTIFF'S RESPONSE TO OSC

[x] By EMAIL– On. September 26, 2024 I attached the documents described above as an email transmission to the following attorneys:

Linda Wong
LWong@wongfleming.com

Daniel Fleming
dfleming@wongflemming.com
dstokes@wongfleming.com

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on **September 26, 2024** at Concord, California.



Karina L. Gonzalez
Legal Assistant to Douglas A. Prutton